IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Vijay Kumar Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.98/2006

DATE OF ORDER :: November 28, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Narpat Singh, for the petitioner.
Mr.Ashok Upadhyaya, P.P.
Mr.Shailendra Kala for non-petitioner No.2.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 23.11.2005 passed by the Additional Sessions Judge, Sojat (for short 'the revisional court' hereinafter), whereby the revision petition filed by the non-petitioner No.2 against the order dt. 21.01.2004 passed by the Additional Chief Judicial Magistrate, Sojat (for short 'the trial court' hereinafter), was allowed and while setting aside the order of the trial court by which the application filed by the non-petitioner under section 311 Cr.P.C. was dismissed, allowed the application under section 311 Cr.P.C. for recalling of the witnesses.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the revisional court as well as by the trial court. I have also gone through the record.

It is contended by the learned counsel for the petitioner that both the parties completed their evidence and the case was posted for final argument. At the time, when the matter was at the stage of final argument, an application was moved by the non-petitioner No.2 under section 311 Cr.P.C. stating therein that new facts have been disclosed against the petitioner and, therefore, it is essential to further cross-examine the petitioner. It has also been stated in the application that the statement of Dr.G.K.Purohit is contradictory and, therefore, he is also required to be re-cross-examined.

On careful perusal of the application filed by the non-petitioner No.2, in my view, no ground for further cross-examination has been stated in the application; what the fact has been stated by the witness, who needs to be cross-examined. I have also gone through the record more particularly the statement of Vijay Kumar and Dr.G.K.Purohit, both these witnesses have been subjected to lengthy cross-examination. From the perusal of the application, it nowhere appears that as to what facts have been disclosed and what is the necessity of further cross-examination of those witnesses.

Learned counsel for non-petitioner No.2 has relied on decisions of this Court in Ram Swaroop Vishnoi Vs. State of Rajasthan, 2006(1) RLW 514, Paramjeet Singh & Anr. vs. State & Anr., RLW 2004(2) Raj. 1004, Bhagwati Lal Sharma vs. State of Rajasthan & Anr., RLW 2004(2) Raj. 1006, Ram Chandra vs. Smt. Igyarsi Devi & Anr., 2002(2) CJ (Raj.) Cr. 1087, Chiman Lal vs. State of Rajasthan, 2002(2) CJ (Raj.) Cr. 1090 and Rahul @ Babu Lal vs. State of Rajasthan, 1998 Cr.L.R. (Raj.) 634, and the decisions of the Hon'ble Supreme Court in Raj Deo Sharma vs. State of Bihar, 1999 Cr.L.R. (SC) 613 and in Mohd. Zahid vs. State of Tamil Nadu, 1999 Cr.L.R. (SC) 627.

The aforesaid decisions relied on by the learned counsel for the non-petitioner No.2 turn on their own facts and are of no help to the non-petitioner. In the circumstances, therefore, the order of the revisional court cannot stand and is liable to be set aside.

The petition is allowed. The order of the revsional court is set aside and that of the trial court is restored.

[H.R.PANWAR],J.

m.asif/-